REMARKS

Applicant respectfully requests reconsideration. Claims 1-8 and 25-34 were pending in this application. Claims 1-8, 28 and 36 have been cancelled, solely to expedite prosecution and without conceding the correctness of the rejections. Applicant expressly reserves the right to file one or more continuing applications on the subject matter of the cancelled claims.

Claims 25, 26, 27, 29, 32, and 34-35 have been amended. Applicant adds new claim 38. Support for the pending claims and the newly added claim can be found in the previously pending claims 28 and 36 and throughout the specification and particularly at pages 2 to 10 and the example. Regarding the use of the phrase "serotonin-norepinephrine reuptake inhibitor," Applicant notes the specification at page 10, lines 1-2, where non-limiting examples of selective norepinephrine reuptake inhibitors are recited. Those skilled in the art appreciate that certain of those examples are more accurately described as serotonin-norepinephrine reuptake inhibitors. Thus, the claims now reflect this more accurate description. As a result, claims 25-27, 29-35, and 37 are pending for examination, with claim 25 being an independent claim. No new matter has been added.

Rejections Under 35 U.S.C. §103

The Examiner rejected Claims 1-8 under 35 U.S.C. 103(a) as being unpatentable over Popik et al. (British Journal of Pharmacology, 2003, Vol. 139, pgs. 1196-1202) in view of Shytle et al. (US Patent No. 6, 734, 215).

Solely to expedite prosecution and without conceding the correctness of the rejection, Applicant cancels claims 1-8. In light of these claim cancellations, the above rejection is moot.

The Examiner rejected Claims 1-8 and 25-36 under 35 U.S.C. 103(a) as unpatentable over Popik et al. (British Journal of Pharmacology, 2003, Vol. 139, pgs. 1196-1202) in view of Shytle et al. (US Patent No. 6, 734, 215), and "further in view of Shytle et al." (US Patent No. 6,734, 215).

Applicant notes an apparent error in this rejection: "the instant claims have been rejected in view of Shytle et al. and further in view of Shytle et al." The Examiner, however, refers to

Fava (Biological Psychiatry, 2003, Vol. 53, pgs. 649-659) in discussing the rejection. Therefore, Applicant assumes that the Examiner intended to refer to Fava and will address the rejections accordingly (as if the claims are rejected over Popik et al. in view of Shytle et al., and further in view of Fava).

As discussed above, claims 1-8 have been cancelled solely to expedite prosecution. The rejection of these claims is now moot.

Regarding claims 25-36, Applicant disagrees with the prima facie argument, but nevertheless amends the claims to advance prosecution. Applicant's amendments overcome the rejection.

As the Examiner acknowledges, Popik et al. does not "teach a method of treating refractory major depression in an individual suffering from mood disorder" (page 4 of the Office Action). Neither Shytle et al. nor Fava, either alone or in combination, offer any predictable guidance to overcome this recognized deficiency of Popik et al. The present amendments now focus on this aspect of the present invention. As such, the present claims overcome the rejection and Applicant respectfully requests allowance.

In more detail, a person of ordinary skill in the art would not have been motivated to combine the cited references.

Treatment-resistant depression is characterized by an insufficient clinical response following multiple rounds of antidepressant therapy. Treatment-resistant patients are diagnosed with reference to their inability to respond to several established antidepressant medication therapies. With regard to Fava, the reference teaches a need to consider several contributing factors, such as medical and psychiatric comorbidity in assessing treatment-resistant depression. There is no guidance or direction in Fava to a predictable solution. Similarly, with regard to Shytle et al., there is no guidance or direction to a predictable solution. Shytle et al. offer no teaching or motivation for a combination product directed to major depressive disorder, including treatment-resistant or refractory conditions. Applicant, to the contrary, demonstrates in humans that administration of mecamylamine in combination with an SSRI to people who are partial responders to SSRI treatment is effective. As recited in the present specification, a

majority of the people treated with the combination were classified as responders at the end of an 8-week trial, as assessed by a 50% reduction in HAM-D scores (compared to placebo treated patients).

In order to create a prima facie argument, the Examiner must find a basis for a reasonable degree of predictability. In this case, to the contrary, the cited references actually combine to teach an infinite number of possible solutions, not one of which has any predictable efficacy. The present rejection, thus, fails to present a prima facie basis.

Accordingly, withdrawal of the rejection is respectfully requested.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. Y0087.70013US01 from which the undersigned is authorized to draw.

Dated: September 18, 2009

Respectfully submitted,

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